

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY	)	
UTILITIES COMPANY FOR A CERTIFICATE OF	)	CASE NO.
PUBLIC CONVENIENCE AND NECESSITY FOR	)	2022-00066
THE CONSTRUCTION OF TRANSMISSION	)	
FACILITIES IN HARDIN COUNTY, KENTUCKY	)	

ORDER

This matter arises upon the motion of Grover K. Berry, filed March 18, 2022, for full intervention. As a basis for his motion, Mr. Berry stated that he owns two parcels of land that will be directly affected by the proposed Kentucky Utilities Company (KU) transmission line routes. KU filed a response to numerous requests for intervention in this matter on April 12, 2022. The response did not address the request made by Mr. Berry directly. In the response, KU objected to requests made by landowners whose land would not be directly affected by the proposed transmission lines.<sup>1</sup>

LEGAL STANDARD

The only person who has a statutory right to intervene in a Commission case is the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sole discretion of the Commission.<sup>2</sup>

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<sup>1</sup> KU's Response to Petitions to Intervene from Unaffected Landowners (filed Apr. 12, 2022) at 1.

<sup>2</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

The statutory standard for permissive intervention, KRS 278.040(2), requires that “the person seeking intervention must have an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”<sup>3</sup>

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001, Section 4, is twofold. Commission regulation 807 KAR 5:001, Section 4(11), requires a person to set forth in the motion to intervene either (1) a special interest in the proceeding that is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In cases involving an application for a Certificate of Public Convenience and Necessity (CPCN) to construct an electric transmission line, the Commission also considers KRS 278.020(9), which includes a person over whose property a proposed transmission line will cross as an “interested person” who may request intervention.

#### DISCUSSION AND FINDINGS

Based on a review of the pleadings and being otherwise sufficiently advised, the Commission finds that Mr. Berry demonstrated that he has a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented for the reasons discussed below.

Mr. Berry filed a timely request for intervention. The proposed transmission line will cross property owned by Mr. Berry, and thus Mr. Berry is an interested person as

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<sup>3</sup> *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 at 3 (Ky. App. Feb. 2, 2007).

defined in KRS 278.020(9). It is reasonable to expect property in the direct path of the proposed line to be impacted by the construction of the line if the CPCN is granted.

Although other landowners may be granted intervention, the size of this project means that not all landowners are situated equally. Based on the maps provided by KU,<sup>4</sup> these proposed transmission lines, as well as the proposed alternative routes, will impact both farmland and suburban residential areas. Suburban homeowners and owners of farm property have different interests because their land usage differs.

In footnote 2 of its response, KU implies that landowner(s) directly affected by the proposed transmission lines do have a special interest, and the company does not object to their participation.<sup>5</sup>

Based on the above, the Commission finds that Mr. Berry is granted full rights of a party in this proceeding. The Commission directs Mr. Berry to the Commission's July 22, 2021 Order in Case No. 2020-00085<sup>6</sup> regarding filings with the Commission.

IT IS HEREBY ORDERED that:

1. The motion of Mr. Berry to intervene is granted.
2. Mr. Berry is entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

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<sup>4</sup> KU's Responses to Commission Staff's First Request for Information (filed Apr. 8, 2022), Item 1, Attachment at 1–36.

<sup>5</sup> KU's Response to Petitions to Intervene from Unaffected Landowners at 1, footnote 2.

<sup>6</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

3. Mr. Berry shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.

4. Mr. Berry shall adhere to the procedural schedule set forth in the Commission's April 6, 2022 Order and as amended by subsequent Orders.

5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, Mr. Berry shall file a written statement with the Commission that:

a. Certifies that he, or his agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.

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PUBLIC SERVICE COMMISSION



Chairman

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Vice Chairman

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Commissioner



ATTEST:



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